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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/700,535	11/05/2003	Franz-Erich Baumann	238157US0	6021

22850 7590 03/16/2006

OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C.  
1940 DUKE STREET  
ALEXANDRIA, VA 22314

EXAMINER
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NILAND, PATRICK DENNIS

ART UNIT	PAPER NUMBER
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1714

DATE MAILED: 03/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/700,535

Applicant(s)

BAUMANN ET AL.

Examiner

Patrick D. Niland

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date: ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/04, 11/03, 6/04</u> | 6) <input type="checkbox"/> Other: ____  |

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1. Claims 1-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

A. It is unclear what the weight percentages of the instant claims are based on, e.g. the entire composition, the polyamide, or some other portion of the composition. This lack of clarity is increased further because the instant claims do not specify the additional required ingredients where the amount of polyamide and flow aid total less than 100%. It is also unclear what other components are required in this instance.

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-17 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 4-9, and 11-25 of copending

Application No. 10/686525. Although the conflicting claims are not identical, they are not patentably distinct from each other because although the instant claims are not identical in scope

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they overlap sufficiently such that one would not perform the instantly claimed inventions without performing that of the copending claims. Copending claim 25 discloses the instantly claimed flow aid and it is expected to necessarily have the instantly claimed particle sizes to function as a flow aid particularly considering the particle sizes of copending claim 24.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-3, 5-12, and 16-17 are rejected under 35 U.S.C. 102(b) as being anticipated by DE 2817027 Feldmann et al., Derwent abstract referenced.

Feldmann discloses the inventions of the instant claims. The disclosed silica is expected to possess the instantly claimed drying loss and other properties of the instant claims related to the flow aid since it is the flow aid of the instant claims.

7. Claims 1-3, 5-14 and 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 2817027 Feldmann et al., Derwent abstract referenced.

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Feldmann discloses the inventions of the instant claims. The disclosed silica is expected to possess the instantly claimed drying loss and other properties of the instant claims related to the flow aid since it is the flow aid of the instant claims. It would have been obvious to one of ordinary skill in the art at the time of the instant invention to use the coating methods of the instant claims 13-14 to coat the articles of Feldmann because these are typical methods of applying powder coatings as admitted at page 2 of the instant specification.

8. Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 2811499 Hervey in view of US Pat. Publication No. 2004/0009340 Zhu et al. and US Pat. No. 6110411 Clausen et al..

Hervey discloses the instantly claimed silica and amount thereof as a flow aid but is silent regarding the particle size of the silica used. See the entire document, particularly column 4, lines 1-4. It would have been obvious to one of ordinary skill in the art at the time of invention to use silicas of the instantly claimed particle sizes and surface areas because they are expected to be required to give the function disclosed in Hervey given the particle size of Hervey (column 1, lines 60-71) and are shown by Zhu to be useful parameters for polyamide flow aids including silica at sections [0006], [0014], [0044], [0045], [0049], [0050], page 6, table 1, [0066], the claims, particularly 18, 37, and 51; and the remainder of the document.

The disclosed silica is expected to possess the instantly claimed drying loss and other properties of the instant claims related to the flow aid since it is the flow aid of the instant claims. It would have been obvious to one of ordinary skill in the art at the time of the instant invention to use the coating methods of the instant claims 11-14 to coat the articles because Zhu shows such polyamide powders to be well known coating agents and these are typical methods of

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applying powder coatings as admitted at page 2 of the instant specification. It would have been obvious to one of ordinary skill in the art at the time of the instant invention to use the method of the instant claim 15 to make the molded articles of Hervey because Hervey discloses sintering and laser sintering, which is well known as taught by Clausen, would have been expected to contribute its known properties to the article of Hervey.

9. Claims 1-17 are rejected under 35 U.S.C. 102(b) as being anticipated by US Pat. No. 6110411 Clausen et al..

Clausen et al. discloses polyamide particles coated with fumed silica flow aid in the instantly claimed amounts and particle sizes and the laser sintering thereof. See the abstract; column 1, lines 3-67; column 2, lines 1-67; column 3, lines 1-67, particularly 39-52; column 5, lines 1-67, particularly 45-55; column 6, lines 1-67, particularly 1-9; column 7, lines 1-67, particularly 28-57; column 10, lines 39-67; claims 1-15; and the remainder of the document. The disclosed silica is expected to possess the instantly claimed drying loss and other properties of the instant claims related to the flow aid since it is the flow aid of the instant claims.

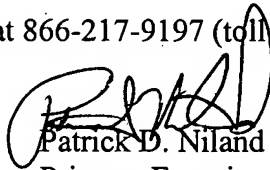
10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patrick D. Niland whose telephone number is 571-272-1121. The examiner can normally be reached on Monday to Thursday from 10 to 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan, can be reached on 571-272-1119. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications

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may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Patrick D. Niland  
Primary Examiner  
Art Unit 1714